

Regulatory Analysis Form

(Completed by Promulgating Agency)

(All Comments submitted on this regulation will appear on IRRC's website)

INDEPENDENT REGULATORY

REVIEW COMMISSION

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Independent Regulatory
Review Commission

(1) Agency
Department of State, Bureau of Professional and Occupational
Affairs

(2) Agency Number: 16A
Identification Number: 065

IRRC Number: 3319.

(3) PA Code Cite: 49 Pa. Code §§ 43b.301— 43b.302.

(4) Short Title: Representation

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Cynthia K. Montgomery, Deputy Chief Counsel, 2601 North Third Street, P.O. Box 69523, Harrisburg, PA 17106-9523; phone (717) 783-7200; fax (717) 787-0251; cymontgome@pa.gov.

Secondary Contact: Jacqueline A. Wolfgang, Regulatory Counsel, P.O. Box 69523, Harrisburg, PA 17106-9523 (phone 717-783-7200) (fax 717-787-0251) jawolfgang@pa.gov.

(6) Type of Rulemaking (check applicable box):

Proposed Regulation

Final Regulation

FINAL-OMITTED REGULATION

Emergency Certification Regulation;

Certification by the Governor

Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

This final-omitted regulation relates to representation for proceedings before the boards and commissions under the Bureau of Professional and Occupational Affairs (Bureau). The rulemaking adopts the General Rules of Administrative Practice and Procedure (GRAPP) (1 Pa. Code §§ 31.1—35.251) for the activities and proceedings before the boards and commissions under the Bureau, with one limited exception: it allows non-attorney representation in formal proceedings for partnerships, corporations, limited liability companies, trusts, and other associations, as well as for agencies and political subdivisions.

(8) State the statutory authority for the regulation. Include specific statutory citation.

The Commissioner has the power to promulgate regulations specifying the procedural rules to be followed in the conduct of hearings in disciplinary matters before a licensing board or licensing commission under 63 Pa.C.S. § 3105(b), pertaining to regulations. In addition, under Section 204(1)(iii) of the Commonwealth Documents Law (CDL) (45 P.S. § 1204(1)(iii)), the Commissioner is authorized to omit the procedures for proposed rulemaking in sections 201 and 202 of the CDL (45 P.S. § 1201 and § 1202) if the administrative regulation or change therein relates to agency procedure or practice.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No, the regulation is not mandated by any federal or state law or court order, or federal regulations.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Like other agencies that have promulgated regulations that supersede GRAPP provisions governing representation of parties in administrative proceedings, the Commissioner is providing more flexibility to those parties who wish to avoid the costs of legal representation. Administrative hearings generally involve questions of fact that do not require complex legal analysis and may not require the legal expertise of an attorney. Hearings before boards and commissions are designed to be brief and informal. Requiring attorney representation in all adversarial hearings undermines the informal, speedy and low-cost nature of administrative proceedings and may dissuade parties from defending matters against them.

It is estimated that each year, the various professional and occupational licensing boards and commissions hold approximately 400 formal hearings. Only those individuals and entities involved in formal proceedings will be affected by this rulemaking. Business entities make up only 5% of licensees, so it is estimated that 5% of formal hearings would be impacted. Therefore, it is estimated that 20 business entities on average would benefit from the change each year because they could elect non-attorney representation. It is impossible to estimate the amount of savings associated with the regulation for these entities due to the number of variables involved – how long a hearing takes, the hourly rate of a particular attorney, travel to and from the hearing, etc.

The Commissioner believes that allowing non-attorney representation will provide business entities (including small businesses), agencies and political subdivisions who appear before boards and commissions under the Bureau with a cost-effective alternative for representation at hearings.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are no relevant federal standards.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Many states allow for representation by non-attorneys in certain agency proceedings.

Connecticut – In Connecticut, the Uniform Administrative Procedures Act (UAPA) at Chapter 54 of the Connecticut statutes governs administrative hearings generally, although individual agencies can adopt their own rules of procedure. The UAPA does not address representation at administrative hearings and a party may be advised or represented by an attorney or another representative, qualified authorized agent or officer, subject to other laws or rules/regulations of the various administrative agencies. Health care professionals are licensed and regulated by the Department of Public Health, while business-related occupations and professions are licensed and regulated by the Department of Consumer Protection. The rules of practice for the Department of Public Health at sections 19a-9-1 through 19a-9-29 set forth the hearing procedures and provide that a party in an administrative proceeding may be represented by an attorney or represent themselves. There does not appear to be regulations permitting non-attorney representation of a business entity, agency or political subdivision. The Department of Consumer Protection does not appear to have separate administrative procedures for its proceedings.

Delaware - The Delaware Administrative Procedures Act is found in Title 29, Part X, Chapter 101 of the Annotated Code of Delaware. It permits a party to be represented by counsel and to appear personally or by other representative. Delaware's Department of State's Division of Professional Regulation houses most of the professional and occupational licensing boards. The Delaware Department of State does not have separate procedural rules.

Maine – Maine's Administrative Procedures Act is found in Title 5, Chapter 375 of the Main Revised Statutes. It requires each agency to adopt rules of practice governing the conduct of adjudicatory proceedings, license proceedings and the rendering of advisory rules, except to the extent that such rules are provided by law. In Maine, the Office of Professional and Occupational Regulation provides administrative and support services to 29 professional and occupational licensing boards. Adjudicatory hearings are held before the boards and are conducted in accordance with the Maine Administrative Procedures Act. In Maine, a licensee has the right to be represented by a lawyer or may appear *pro se*.

Maryland – the Maryland Administrative Procedures Act is found in Title 10, Subtitle 2 of the Maryland State Government Code Annotated. In Maryland, agencies may hold their own hearings or may delegate to the Office of Administrative Hearings. Regulations of the Office of Administrative Hearings permit an individual to represent himself or herself, or a person may be represented by an attorney; or may be represented by a non-attorney when authorized pursuant to State Government Article § 9-1607.1 of the Annotated Code of Maryland. See, MD ADC 28.02.01.08 (relating to representation of parties). Section 9-1607.1 permits legal representation by a non-attorney in certain proceedings. As relevant to this rulemaking, an officer of a corporation, an employee designated by an officer of a corporation, a general partner in a business operated as a partnership or an employee designated by a general partner, or an employee designated by the owner of a business operated as a sole proprietorship may appear in certain administrative hearings relating to regulation of businesses and an individual may represent a unit of state government at the direction of the unit of state government.

Massachusetts – Massachusetts law provides for administrative procedure under Chapter 30A of the Massachusetts General Laws, Part 1, Title III. It requires the commissioner of administration to promulgate rules and regulations for the conduct of adjudicatory proceedings, and it also permits agencies to adopt their own rules that substitute, in whole or in part, or are additions to the commissioner's rules.

Under the “Standard Adjudicatory Rules of Practice and Procedure,” an individual may appear on his or her own behalf, or may be accompanied, represented and advised by an “authorized representative.” An authorized officer or employee may represent a corporation, an authorized member may represent a partnership or joint venture, and an authorized trustee may represent a trust. See 801 MA ADC 1.01.

New Hampshire – New Hampshire’s Administrative Procedure Act is found in Title LV, chapter 541-A of the Revised Statutes of New Hampshire. It directs each agency to adopt its own rules governing the nature and requirement of all formal and informal procedures available in an adjudicative proceeding. For this reason, nearly every professional and occupational board has its own rules relating to representation, and many of them permit a party in an adjudicatory proceeding to be represented by counsel or “lay representation, but such person appearing on behalf of a party shall first file a letter announcing the fact of representation at the earliest date practicable.” See, for example, regulations of the Board of Barbering, Cosmetology and Esthetics at N.H. Code Admin. R. Bar 206.05; regulations of the Board of Nursing at N.H. Code Admin. R. Nur 207.05, etc.

New Jersey – Under New Jersey’s Uniform Administrative Procedure Rules, a party may represent himself or herself, be represented by an attorney, or be represented or assisted by a non-lawyer permitted to make an appearance in a contested case under New Jersey Court Rule R. 1:21-1(e), or be represented by a law graduate or student under New Jersey Court Rule R.1:21-3(b). N.J.A.C. 1:1-5.1 (relating to representation). The following non-lawyers may apply for permission to represent a party at a contested case hearing: persons whose appearance is required by Federal law; state agency employees; county or municipal welfare agency employees; legal service paralegals or assistants; close corporation principals; union representatives in civil service and employment relations cases; individuals representing parents or children in special education proceedings; county or local government employees in civil service cases; and individuals representing claimants or employers in workers compensation cases. N.J.A.C. 1:1-5.4 (relating to representation by non-lawyers).

New York - In New York, the Department of State licenses/regulates certain professions, while the State Education Department’s Office of the Professions license others. All hearings are conducted in accordance with the State Administrative Procedure Act, Chapter 82 of the Consolidated Laws. Section 501 of the State Administrative Procedure Act provides that every party or person has the right to appear in person or by or with counsel. It is left to the various agencies as to whether a person who is not a lawyer has the right to appear for or represent others before the agency. The Department of State’s Rules of Procedure for Adjudicatory Proceedings are set forth in Part 400 of 19 NYCRR. The Department of State’s Office of Administrative Hearings permits licensees and applicants for licensure to represent themselves at hearings or may bring an attorney or non-attorney representative. Every representative must file a notice on forms provided by the Department. The Rules of the Board of Regents under the Education Department relating to disciplinary proceedings at 8 NYCRR, Ch. 1 do not address who may represent a licensed professional at a hearing.

Ohio – The Ohio Administrative Procedure Act is found in Title 1, Chapter 119 of the Ohio Revised Code Annotated. At administrative hearings in Ohio, a person may appear in person, by his or her attorney, or by such other representative who is permitted to practice before the agency. However, only an attorney may represent a party at a hearing at which a record is taken which may be the basis of an appeal to court. OH ST § 119.13 (pertaining to representation of parties and witnesses). For this reason, most professional and occupational licensing boards in Ohio only permit an individual to represent himself or herself or be represented by an attorney. See, for example, regulations of the Ohio Medical Board at OH ADC 4731-13-01 (relating to representatives; appearances).

Rhode Island – Rhode Island’s Administrative Procedure Act is found in Title 42, Chapter 35 of the General Laws of Rhode Island. Each agency promulgates its own regulations relating to representation at hearings. The Rhode Island Department of Health permits representation by counsel, a bona fide officer, partner, director, member or full-time employee of an individual firm, association, partnership, limited liability company or corporation on behalf of that entity. See, 216 RI ADC 10-0504.4. The Rhode Island Department of Business Regulation permits individuals and partners of partnerships to appear *pro se* if they so choose. Corporations, however, must be represented by counsel. See, 230 RI ADC 10-00-2.7 (relating to representation).

Virginia – Virginia’s Administrative Process Act is located in Title 2.2 of the Code of Virginia, Chapter 40, which permits a party to represent him or herself or to be accompanied by and represented by counsel. A few agencies have statutory or regulatory provisions permitting non-lawyer representation, but none were identified that were relevant to professional or occupational licensing boards or authorities.

West Virginia – The West Virginia State Administrative Procedures Act is found at Chapter 29A of West’s Annotated Code of West Virginia. It requires each agency to adopt procedural rules governing the formal and informal procedures and practice before the agency, together with forms and instructions. For this reason, each of the professional and occupational licensing boards and commissions have their own regulations governing who may represent a party. Generally, any party to a hearing may represent himself or herself or has the right to be represented by an attorney. See, for example, WV ADC § 1-2-3 (hearing procedures of the Board of Accountancy); § 5-4-6 (hearing procedures of the Board of Dentistry); etc.

Therefore, the Commissioner believes this regulation, which allows for a cost-effective option in administrative hearings, will enhance Pennsylvania’s ability to compete with other states.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No, this regulation will not affect any other regulations of the Bureau or any other state agency.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. (“Small business” is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

Because the regulation is a change to agency procedures or practice, the Commissioner did not seek input from the public or any particular group.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The various licensing boards and commissions license nearly 800,000 individuals and entities in this Commonwealth. All business entities that fall under the purview of the Commissioner would be affected by this regulation. There are approximately 40,000 business entities that hold licenses in this Commonwealth (about 5% of all licensees), ranging from barber shops and cosmetology salons to pharmacies to vehicle dealerships, a vast majority of which are small businesses. This regulation would provide for additional options relating to representation in agency proceedings and hearings. Partnerships, corporations, limited liability companies, trusts and other associations, in addition to agencies and political subdivisions, would be positively affected by being permitted to have a non-attorney represent them in formal proceedings before the professional and occupational licensing boards and commissions. In that a vast majority of licensees of the professional and occupational licensing boards either are or work for small businesses, the benefits associated with non-attorney representation will benefit small businesses.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

All parties who come before the various professional and occupational licensing boards under the Bureau are subject to the regulation. The regulation is an expansion upon who may represent a business entity, association, agency or political subdivision in a formal proceeding before a licensing board or commission within the Bureau. Individual parties have always had the ability to represent themselves or be represented by an attorney. Business entities, associations, agencies and political subdivisions may continue to elect to be represented by an attorney or may be represented by non-attorney representatives as set forth in this rulemaking.

It is estimated that each year, the various professional and occupational licensing boards and commissions hold approximately 400 formal hearings. Only those individuals and entities involved in formal proceedings will be affected by this rulemaking.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

There are no adverse impacts associated with this regulation on individuals, small businesses, or any other entity. This regulation will provide business entities, associations, agencies and political subdivisions who appear before boards and commissions under the Bureau with a cost-effective alternative for representation. The regulation would positively impact business licensees, including small businesses, who have fewer funds to expend on legal representation in less complex administrative hearings.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The regulation allows for non-attorney representation for business entities, associations, agencies and political subdivisions in formal proceedings before boards and commissions under the Bureau. This regulation provides a cost-effective alternative for business licensees, including small businesses who may not have sufficient funds to expend on legal representation. No costs or adverse effects have been identified associated with this rulemaking.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs to the regulated community associated with this rulemaking. There may be savings for business licensees and other entities, including small businesses, that elect to use non-attorney representation at formal hearings before the various licensing boards and commissions. It is impossible to accurately estimate the savings to entities appearing before the various boards and commissions due to the number of variables involved – the length of the hearing, the hourly fee of a particular attorney, travel to and from the hearing, etc.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs to local governments associated with this rulemaking. While it is rare, should a local government be a party to a proceeding before a professional or occupational licensing board, it would benefit from potential savings associated with the election of non-attorney representation.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs to state government associated with this regulation. Again, although rare, should a state agency be a party to a proceeding before a professional or occupational licensing board, it would benefit from potential savings association with the election to use non-attorney representation.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

No legal, accounting or consulting procedures or additional reporting, recordkeeping or other paperwork is required for the implementation of this regulation. The regulation allows for non-attorney representation in the approximately 400 formal proceedings annually before boards and commissions under the Bureau.

(22a) Are forms required for implementation of the regulation?

No.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

N/A

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY 21-22	FY +1 22-23	FY +2 23-24	FY +3 24-25	FY +4 25-26	FY +5 26-27
SAVINGS:						
Regulated Community	unknown	unknown	unknown	unknown	unknown	unknown
Local Government	unknown	unknown	unknown	unknown	unknown	unknown
State Government	unknown	unknown	unknown	unknown	unknown	unknown
Total Savings	unknown	unknown	unknown	unknown	unknown	unknown
COSTS:						
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$0	\$0	\$0	\$0	\$0	\$0
REVENUE LOSSES:						
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY -3 FY 18-19	FY -2 FY 19-20	FY -1 FY 20-21 (projected)	Current FY FY 21-22 (budgeted)
Bureau of Professional and Occupational Affairs	\$58,417,537.08	\$57,197,357.19	\$56,7222,000.00	\$67,057,000.00

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Because the regulation has no adverse impact on small business, no economic impact statement was developed.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

The Commissioner could discern no particular group which needs special provisions.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory provisions have been considered. The commissioner believes that the rulemaking represents the least burdensome acceptable method of providing this flexibility to business entities (partnerships, corporations, limited liability companies, trusts, and other associations), as well as for agencies and political subdivisions, who may be required to participate in administrative hearings before the various boards and commissions.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

As this rulemaking has no adverse impact on small business, no regulatory flexibility analysis was conducted.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

No data was the basis for this regulation.

(29) Include a schedule for review of the regulation including:

- | | |
|---|--------------------------------|
| A. The length of the public comment period: | <u> N/A </u> |
| B. The date or dates on which any public meetings or hearings will be held: | <u> N/A </u> |
| C. The expected date of delivery of the final-form regulation: | <u> Fall 2021 </u> |
| D. The expected effective date of the final-form regulation: | <u> Fall 2021 </u> |
| E. The expected date by which compliance with the final-form regulation will be required: | <u> Fall 2021 </u> |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <u> N/A </u> |

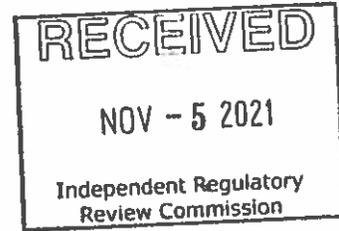
(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Commissioner intends to evaluate the continuing effectiveness of the regulation on an annual basis and any time there might be comprehensive amendments to the statutes or regulations that serve as a basis for administrative practices and procedures.

CDL-1

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)



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<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p>Commissioner of Professional and Occupational Affairs</p> <p>_____ (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>16A-065</u></p> <p>DATE OF ADOPTION: _____</p> <p><i>K. Kalonji Johnson</i></p> <p>BY: <u>K. Kalonji Johnson</u></p> <p>TITLE: <u>Commissioner</u> (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY: <i>[Signature]</i> _____ (Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><u>October 27, 2021</u> DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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FINAL RULEMAKING (WITH PROPOSED OMITTED)

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**49 PA. CODE CHAPTER 43b
SUBCHAPTER D**

§§ 43b.301-43b.302

The Commissioner of Professional and Occupational Affairs (Commissioner) hereby amends 49 Pa. Code, Chapter 43b, by adding Subchapter D (relating to practice and procedure) pertaining to activities of and formal proceedings before the licensing boards and commissions under the Bureau of Professional and Occupational Affairs (Bureau), to read as set forth in Annex A.

Effective date

The amendments will be effective upon publication in the *Pennsylvania Bulletin*.

Statutory authority

The Commissioner has the power to promulgate regulations specifying the procedural rules to be followed in the conduct of hearings in disciplinary matters before a licensing board or licensing commission under 63 Pa.C.S. § 3105(b), pertaining to regulations.

Background and Purpose

The Administrative Agency Law permits, but does not require, a party to be represented when appearing before a Commonwealth agency. *See* 2 Pa.C.S. § 502, pertaining to representation. The General Rules of Administrative Practice and Procedure (GRAPP) (1 Pa. Code §§ 31.1—35.251) apply “when agencies hold a hearing, unless the agency adopted alternate procedures.” *KC Equities v. Dep’t of Publ. Welfare*, 95 A.3d 918, 932 (Pa. Cmwlth. 2014). Section 31.21 of GRAPP authorizes individuals to appear on their own behalf. It also provides that a member of a partnership may represent the partnership, a bona fide officer of a corporation, trust or association may represent the corporation, trust or association, and an officer or employee of another agency or of a political subdivision may represent the agency or political subdivision in presenting any submittal to an agency. However, for adversarial proceedings, GRAPP requires all parties, except for individuals appearing on their own behalf, to be represented by an attorney unless otherwise permitted by the agency in a specific case. *See*, 1 Pa. Code § 31.21—§ 31.23 (relating to appearance in person; appearance by attorney; and other representation prohibited at hearings).

This rulemaking expressly adopts GRAPP for the activities and proceedings before the licensing boards and commissions under the Bureau, with a limited exception. The Commissioner, in consultation with the various boards and commissions, is providing for non-attorney representation in formal proceedings involving business organizations, such as partnerships, corporations, limited liability companies, trusts and other associations, as well as agencies and political subdivisions. Like other agencies that have promulgated regulations that supersede GRAPP’s provisions governing representation of parties in administrative proceedings, the Commissioner is adopting this rulemaking to provide more flexibility to those entities who wish to avoid the costs of legal representation. Administrative hearings generally involve questions of fact that do not require complex legal analysis and may not require the legal expertise of an attorney. Hearings before boards and commissions are designed to be brief and informal. Requiring attorney representation in all adversarial hearings involving business entities, agencies or political

subdivisions undermines the informal, speedy and low-cost nature of administrative proceedings and may dissuade parties from defending matters against them. The Commissioner believes that allowing non-attorney representation would provide small businesses with a cost-effective alternative for representation at hearings.

Through this rulemaking, the Commissioner is joining other Commonwealth agencies that allow representation by non-attorneys in administrative proceedings. For example, the Department of Agriculture allows a partnership to be represented by any of its members and a corporation or association to be represented by any of its officers for adjudicatory proceedings relating to matters within its jurisdiction. *See*, 7 Pa. Code § 131.12 (relating to appearances). The Pennsylvania Labor Relations Board permits entry of appearances by attorneys or other representatives at 34 Pa. Code § 91.2 (relating to appearances); and the State Health Facility Hearing Board permits a member of a partnership to represent the partnership; a bona fide officer of a corporation, trust or association to represent a corporation, trust or association; and an officer or employee of another agency or political subdivision to represent the agency or political subdivision in an appeal or petition before the hearing board. *See*, 37 Pa. Code § 197.9 (relating to appearances).

Omission of Proposed Rulemaking

Under section 204(1)(iii) of the Commonwealth Documents Law (CDL) (45 P.S. § 1204(1)(iii)), the Commissioner is authorized to omit the procedures for proposed rulemaking in sections 201 and 202 of the CDL (45 P.S. §§ 1201 and 1202) if the administrative regulation or change therein relates to agency procedure or practice. Publication of proposed rulemaking is unnecessary because the regulations are procedural regulations relating to representation by non-attorneys for partnerships, corporations, limited liability companies, trusts, other associations and agencies and political subdivisions in administrative proceedings before the professional and occupational licensing boards and commissions within the Bureau.

Description of Amendments

Section 43b.301 (relating to the applicability of general rules of practice and procedure)

Section 43b.301(a) expressly adopts GRAPP, which governs the practice and procedure before the boards and commissions under the Bureau, except where it is inconsistent with this chapter. Section 43b.301(b) clarifies that subsection (a) supplements 1 Pa. Code § 31.1 (relating to scope of part).

Section 43b.302 (relating to representation in formal proceedings)

Section 43b.302(a) reiterates the GRAPP rule that an individual may appear on their own behalf or may be represented by an attorney in formal proceedings before the boards and commissions under the Bureau. Section 43b.302(a) also permits a partnership, corporation, limited liability company, trust, association, agency or political subdivision to be represented by an attorney in formal proceedings before the boards and commissions under the Bureau or may be represented by a non-attorney as provided in § 43b.302(b). The non-attorneys listed in paragraphs

(1) through (5) of § 43b.302(b) are the persons by or under whose authority the powers of a business organization/entity are exercised and under whose direction the activities and affairs of the entity are managed. Paragraph (6) provides that an officer or employee of an agency or political subdivision may represent the agency or political subdivision, provided the rules and policies of that agency or subdivision allow such representation. Section 43b.302(c) makes clear that subsection (a) and (b) supersede GRAPP at 1 Pa. Code §§ 31.21 and 31.23 (relating to appearance in person; and other representation prohibited at hearings).

Fiscal Impact and Paperwork Requirements

There is no fiscal impact and no paperwork requirements are associated with this regulation.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (RRA) (71 P.S. § 745.5a(c)), on November 5, 2021, the Commissioner submitted copies of the regulation, with proposed rulemaking omitted, to the Independent Regulatory Review Commission (IRRC), chairpersons of the Senate Consumer Protection and Professional Licensure Committee (SPC/PLC) and the House Professional Licensure Committee (HPLC). On the same date, the Commissioner submitted a copy of the regulation to the Office of Attorney General under the Commonwealth Attorneys Act (71 P.S. §§ 732-101 —732-506).

Under sections 5.1(e) and (j.2) of the RRA (71 P.S. § 745.5a(e) and (j.2)), the regulations were deemed approved by the SPC/PLC and the HPLC on _____, 2021, and were approved by IRRC on _____, 2021.

Additional Information

Individuals who need information about the final-omitted regulation may contact the Bureau of Professional and Occupational Affairs, at P.O. Box 2649, Harrisburg, PA 17105-2649, RA-BPOA@pa.gov.

Findings

The Commissioner finds that:

- (1) Public notice of the Commissioner's intention to promulgate these regulations under the procedures in sections 201 and 202 of the Commonwealth Documents Law (CDL) (45 P.S. §§ 1201 and 1202) has been omitted under section 204 of the CDL (45 P.S. § 1204) because publication of proposed rulemaking is unnecessary in that the regulations relate only to agency procedure or practice.
- (2) The promulgation of the regulations in the manner provided in this order is necessary and appropriate to effectuate non-attorney representation in formal

proceedings before the boards and commissions under the Bureau.

Order

The Commissioner, acting under the authority of 63 Pa.C.S. § 3105(b) orders that:

(a) The regulations at 49 Pa. Code, Chapter 43b are hereby amended to read as set forth in Annex A.

(b) The Commissioner shall submit this final-omitted regulation to the Office of Chief Counsel and the Office of Attorney General for approval as to form and legality as required by law.

(c) The Commissioner shall submit this final-omitted regulation to the Independent Regulatory Review Commission, Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee as required by law.

(d) The Commissioner shall certify this final-omitted regulation and deposit it with the Legislative Reference Bureau as required by law.

(e) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

K. Kalonji Johnson
Commissioner of Professional
and Occupational Affairs

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART 1. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL
AFFAIRS

SUBCHAPTER D. PRACTICE AND PROCEDURE

§ 43b.301. Applicability of general rules of practice and procedure.

(a) Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) is applicable to the activities of and formal proceedings before the licensing boards and commissions under the Bureau insofar as it is not inconsistent with this chapter.

(b) Subsection (a) supplements 1 Pa. Code § 31.1 (relating to scope of part).

§ 43b.302. Representation in formal proceedings.

(a) General rule. In formal proceedings before the licensing boards and commissions under the Bureau, an individual may appear on their own behalf or may be represented by an attorney as provided by 1 Pa. Code § 31.22 (relating to appearance by attorney). A partnership, corporation, limited liability company, trust, association, agency or political subdivision may be represented in formal proceedings by an attorney as provided by 1 Pa. Code § 31.22 or may be represented in formal proceedings by a non-attorney as provided in subsection (b).

(b) Non-attorney representation authorized. Non-attorney representation of partnerships, corporations, limited liability companies, trusts, associations, agencies or political subdivisions in formal proceedings before the licensing boards and commissions is permitted as follows:

(1) A general partner of a partnership may represent the partnership.

(2) A bona fide officer or director of a corporation (for profit or not-for-profit) may represent the corporation.

(3) A manager of a manager-managed limited liability company or a member of a member-managed limited liability company may represent the limited liability company.

(4) A trustee of a trust may represent the trust.

(5) A member or other authorized representative of any other type of association may represent the association.

(6) An officer or employee of an agency or political subdivision may represent the agency or political subdivision, provided the rules and policies of that agency or subdivision allow such representation.

(c) *Applicability of the General Rules of Administrative Practice and Procedure.* Subsection (a) and (b) supersede 1 Pa. Code §§ 31.21 and 31.23 (relating to appearance in person; and other representation prohibited at hearings) regarding representation of partnerships, corporations, limited liability companies, trusts, associations, agencies or political subdivisions in formal proceedings before the licensing boards and commissions under the Bureau.

* * * * *



**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 787-8503**

November 5, 2021

The Honorable George D. Bedwick, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

**Re: Final Regulation with Notice of Proposed Rulemaking Omitted
Bureau of Professional and Occupational Affairs
16A-065: Representation**

Dear Chairman Bedwick:

Enclosed is a copy of a final rulemaking package of the Commissioner of Professional and Occupational Affairs pertaining to Representation.

The Commissioner will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Kalonji Johnson".

**K. Kalonji Johnson, Commissioner
Bureau of Professional and Occupational Affairs**

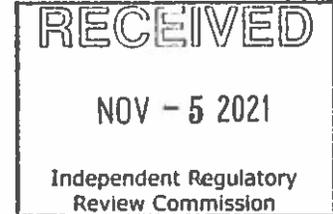
**KKJ/CKM:bmz
Enclosure**

**cc: K. Kalonji Johnson, Commissioner of Professional and Occupational Affairs
Pamela Iovino, Deputy Secretary of Regulatory Programs
Marc Farrell, Deputy Director of Policy, Department of State
Cynthia Montgomery, Deputy Chief Counsel, Department of State
Jacqueline A. Wolfgang, Regulatory Unit Counsel, Department of State**

AG

Worthington, Amber

From: Elliott, Amy M. <aelliott@attorneygeneral.gov>
Sent: Friday, November 5, 2021 1:56 PM
To: Rizzi, Alicia (GC); Trotter, Carolyn
Cc: Abelson, Addie
Subject: RE: [EXTERNAL] DOS Final-Omitted Regulation #16A-065



Receipt acknowledged.

Amy M. Elliott
Chief Deputy Attorney General
Legal Review Section
717-783-6316
aelliott@attorneygeneral.gov

From: Rizzi, Alicia (GC) <arizzi@pa.gov>
Sent: Friday, November 5, 2021 11:00 AM
To: Elliott, Amy M. <aelliott@attorneygeneral.gov>; Trotter, Carolyn <trotter@attorneygeneral.gov>
Cc: Abelson, Addie <adabelson@pa.gov>
Subject: [EXTERNAL] DOS Final-Omitted Regulation #16A-065

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning,

Attached please find the Department of State's final-omitted regulation #16A-065 for your review.

Please respond to this email with an acknowledgement of receipt so that the Department of State can provide IRRC with proof of delivery.

Thank you,

Alicia C. Rizzi | Legal Office Administrator
Governor's Office of General Counsel
Commonwealth of Pennsylvania
333 Market Street Tower, 17th Floor | Harrisburg, PA 17101
Phone: 717.787.9344 | Fax: 717.787-1788
arizzi@pa.gov | www.ogc.pa.gov

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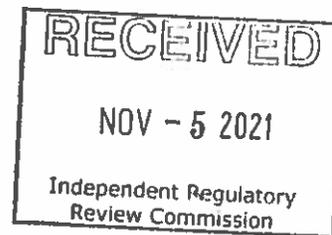
This message has been scanned for malware by Websense. www.websense.com

Sen

Worthington, Amber

From: Blauch, Tammy <tblauch@pasen.gov>
Sent: Friday, November 5, 2021 11:01 AM
To: Worthington, Amber; Smeltz, Jennifer
Subject: RE: DELIVERY 16A-065

Hello Amber,
Senator Tomlinson's office received the notice.
Thank you.



Tammy Blauch
Executive Secretary
Office of Senator Robert M. Tomlinson
Room 286 Main Capitol Building
Harrisburg, PA 17120
(717)-787-5072
Fax: (717)772-2991
tblauch@pasen.gov

From: Worthington, Amber <agontz@pa.gov>
Sent: Friday, November 5, 2021 10:50 AM
To: Smeltz, Jennifer <jmsmeltz@pasen.gov>; Blauch, Tammy <tblauch@pasen.gov>
Subject: DELIVERY 16A-065

Ⓢ CAUTION : External Email Ⓢ

The Commissioner of the Bureau of Professional and Occupational Affairs is delivering the following final-omitted rulemaking today **Friday, November 5, 2021**:

- Commissioner of the Bureau of Professional and Occupational Affairs: 16A-065 Non-Attorney Representation

PLEASE provide a written (email) CONFIRMATION of receipt of this notice.

Amber A. Worthington, PLS | Legal Assistant Supervisor
Office of Chief Counsel | Department of State
Governor's Office of General Counsel
P.O. Box 69523 | Harrisburg, PA 17106-9523
Office Phone 717.783.7200 | Fax: 717.787.0251
agontz@pa.gov | www.dos.pa.gov

(preferred pronouns: they, them, theirs)

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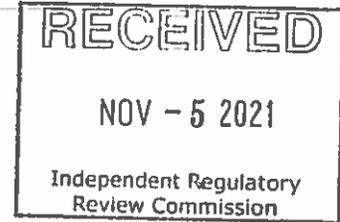
message in error, please send a reply e-mail to the sender and delete the material from any and all computers. Unintended transmissions shall not constitute waiver of the attorney-client or any other privilege.

From: Livingston, Jerry
To: Worthington, Amber; Vazquez, Enid
Subject: RE: DELIVERY 16A-065
Date: Friday, November 5, 2021 10:53:27 AM

Sen

Received, thank you!

From: Worthington, Amber <agontz@pa.gov>
Sent: Friday, November 5, 2021 10:51 AM
To: Livingston, Jerry <Jerry.Livingston@pasenate.com>; Vazquez, Enid <Enid.Vazquez@pasenate.com>
Subject: DELIVERY 16A-065



■ EXTERNAL EMAIL ■

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(preferred pronouns: they, them, theirs)
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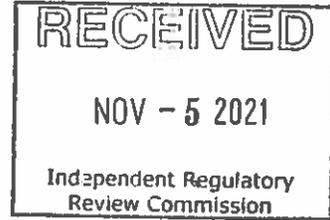
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H

Worthington, Amber

From: Emily Hackman <Eepler@pahousegop.com>
Sent: Friday, November 5, 2021 12:00 PM
To: Worthington, Amber; Nicole Sidle
Subject: RE: DELIVERY 16A-065

Received.



Emily L. Epler
Administrative Assistant II
David S. Hickernell, Majority Chairman
Professional Licensure Committee
Room 43, East Wing
Harrisburg, PA 17120-2098
717-783-2076

From: Worthington, Amber <agontz@pa.gov>
Sent: Friday, November 5, 2021 10:52 AM
To: Nicole Sidle <Nsidle@pahousegop.com>; Emily Hackman <Eepler@pahousegop.com>
Subject: DELIVERY 16A-065

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- Commissioner of the Bureau of Professional and Occupational Affairs: 16A-065 Non-Attorney Representation

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Amber A. Worthington, PLS | Legal Assistant Supervisor
Office of Chief Counsel | Department of State
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P.O. Box 69523 | Harrisburg, PA 17106-9523
Office Phone 717.783.7200 | Fax: 717.787.0251
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(preferred pronouns: they, them, theirs)

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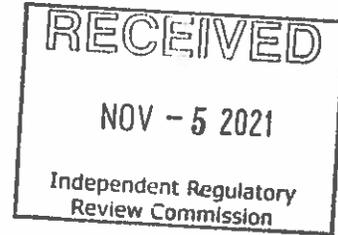
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H

Worthington, Amber

From: Wilson, Marlene <MWilson@pahouse.net>
Sent: Friday, November 5, 2021 11:06 AM
To: Worthington, Amber
Subject: RE: DELIVERY 16A-065



Received. Thank you.



*Marlene Wilson, Esquire
Senior Committee Executive Director
House Professional Licensure Committee
Rep. Jake Wheatley, Jr., Chairman
Phone: (717) 787-4032
Internal Phone: 6253
Email - mwilson@pahouse.net*

From: Worthington, Amber <agontz@pa.gov>
Sent: Friday, November 5, 2021 10:52 AM
To: Wilson, Marlene <MWilson@pahouse.net>
Subject: DELIVERY 16A-065

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